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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **EDWARD TOBY MOON**
18912 Shore Drive
14 Madera, California 93638

15 Registered Nurse License No. 121041
Public Health Nurse Certificate No. 6558

16 Respondent.
17

Case No. 2009-215

A C C U S A T I O N

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19 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

20 **PARTIES**

21 1. Complainant brings this Accusation solely in her official capacity as the
22 Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer
23 Affairs.

24 **Registered Nurse License**

25 2. On or about October 1, 1959, the Board issued Registered Nurse License
26 No. 121041 to Edward Toby Moon ("Respondent"). The license will expire on
27 September 30, 2009, unless renewed.

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1 Public Health Nurse Certificate

2 3. On or about December 4, 1959, the Board issued Public Health Nurse
3 Certificate No. 6558 (“certificate”) to Respondent. The certificate will expire on
4 September 30, 2009, unless renewed.

5 JURISDICTION

6 4. Business and Professions Code (“Code”) section 2750 provides, in
7 pertinent part, that the Board may discipline any licensee, including a licensee holding a
8 temporary or an inactive license, for any reason provided in Article 3 (commencing with section
9 2750) of the Nursing Practice Act.

10 5. Code section 2764 provides, in pertinent part, that the expiration of a
11 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
12 against the licensee or to render a decision imposing discipline on the license. Under Code
13 section 2811(b), the Board may renew an expired license at any time within eight years after the
14 expiration.

15 STATUTORY PROVISIONS

16 6. Code section 2761 states, in pertinent part:

17 “The board may take disciplinary action against a certified or licensed nurse or
18 deny an application for a certificate or license for any of the following:

19 (a) Unprofessional conduct, which includes, but is not limited to, the following:

20 (1) Incompetence, or gross negligence in carrying out usual certified or licensed
21 nursing functions.”

22 7. Code section 2762 states:

23 “In addition to other acts constituting unprofessional conduct within the meaning
24 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed
25 under this chapter to do any of the following:

26 (a) Obtain or possess in violation of law, or prescribe, or except as directed by a
27 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish
28 or administer to another, any controlled substance as defined in Division 10 (commencing with

1 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
2 defined in Section 4022.

3 (e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible
4 entries in any hospital, patient, or other record pertaining to the substances described in
5 subdivision (a) of this section.”

6 8. Health and Safety Code section 11150 states, in pertinent part:

7 “No person other than a physician, dentist, podiatrist, or veterinarian, or
8 naturopathic doctor shall write or issue a prescription.”

9 **REGULATORY PROVISIONS**

10 9. California Code of Regulations, title 16, section 1442, states:

11 As used in Section 2761 of the code, 'gross negligence' includes an
12 extreme departure from the standard of care which, under similar circumstances,
13 would have ordinarily been exercised by a competent registered nurse. Such an
14 extreme departure means the repeated failure to provide nursing care as required
or failure to provide care or to exercise ordinary precaution in a single situation
which the nurse knew, or should have known, could have jeopardized the client's
health or life.

15 **DRUGS**

16 10. “Toradol” is a dangerous drug within the meaning of Business and
17 Professions Code section 4022, in that it requires a prescription under federal law.

18 **COST RECOVERY**

19 11. Code section 125.3 provides, in pertinent part, that the Board may request
20 the administrative law judge to direct a licentiate found to have committed a violation or
21 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
22 and enforcement of the case.

23 **BACKGROUND INFORMATION**

24 12. On or about April 17, 2007, at 1800 hours, Respondent was caring for
25 patient “Mr. P”, who was vomiting and complaining of stomach pain. Respondent contacted
26 Dr. H, who told Respondent to administer 50 mg. of Phenergan one time. At approximately
27 1915 hours, Dr. H went to Mr. P’s room to evaluate him. Dr. H discovered that Respondent had
28 also written a prescription for 60 mg. of Toradol on the physician’s order form as a verbal order

1 by Dr. H without Dr. H's authorization. Dr. H refused to sign the order for Toradol. In addition,
2 Dr. H noted that registered nurse J.W. administered the Toradol at 1800 hours as directed by
3 Respondent.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Gross Negligence)**

6 13. Respondent is subject to discipline under Code section 2761(a), on the
7 grounds of unprofessional conduct, as defined in Code section 2761(a)(1), in that on or about
8 April 17, 2007, while on duty as a supervising nurse at Coalinga State Hospital, located in
9 Coalinga, California, Respondent was grossly negligent in that he ordered the administration of
10 Toradol, a dangerous drug, to Mr. P without a physicians order.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Prescribed a Dangerous Drug)**

13 14. Respondent is subject to discipline under Code section 2761(a), on the
14 grounds of unprofessional conduct, as defined in Code section 2762(a), in that on or about
15 April 17, 2007, while on duty as a supervising nurse at Coalinga State Hospital, located in
16 Coalinga, California, Respondent unlawfully prescribed Toradol, a dangerous drug, to Mr. P, in
17 violation of Health and Safety Code section 11150.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Falsifying Medication Records)**

20 15. Respondent is subject to discipline under Code section 2761(a), on the
21 grounds of unprofessional conduct, as defined in Code section 2762(e), in that on or about
22 April 17, 2007, while on duty as a supervising nurse at Coalinga State Hospital, located in
23 Coalinga, California, Respondent falsified medical records by writing a prescription for Toradol
24 on the physicians order form as a verbal order authorized by Dr. H, when Dr. H did not prescribe
25 Toradol to Mr. P.

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1 **PRAYER**

2 **WHEREFORE**, Complainant requests that a hearing be held on the matters
3 herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:


4 1. Revoking or suspending Registered Nurse License Number 121041, issued
5 to Edward Toby Moon;

6 2. Revoking or suspending Public Health Nurse Certificate No. 6558, issued
7 to Edward Toby Moon;

8 3. Ordering Edward Toby Moon to pay the Board of Registered Nursing the
9 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
10 Professions Code section 125.3; and,

11 4. Taking such other and further action as deemed necessary and proper.

12 DATED: 3/23/09

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14 RUTH ANN TERRY, M.P.H., R.N.
15 Executive Officer
16 Board of Registered Nursing
17 Department of Consumer Affairs
18 State of California
19 Complainant
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SA2007103615
Accusation (kdg) 10/17/08